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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,400	09/26/2006	Stephan Bohm	ROT.709.US	2154

60404 7590 08/05/2010

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EXAMINER	
PATEL, NIHIR B	

ART UNIT	PAPER NUMBER
3772	

NOTIFICATION DATE	DELIVERY MODE
08/05/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AOPATENT@FULBRIGHT.COM

Office Action Summary	Application No.	Applicant(s)	
	10/594,400	BOHM ET AL.	
	Examiner	Art Unit	
	NIHIR PATEL	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *response to restriction filed 5/25/2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 12-33* is/are pending in the application.

4a) Of the above claim(s) *1-9,14-25,27 and 30-32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10,12,26,28 and 33* is/are rejected.

7)☒ Claim(s) *13 and 29* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *09/17/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election without traverse of Group II invention, claims 10, 12, 13, 26-29 and 33 in the reply filed on May 25th, 2010 is acknowledged.

2. Claims 1-9, 14-25, 27 and 30-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 25th, 2010.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in the current application filed on September 26th, 2006.

Claim Rejections - 35 USC § 112 6th Paragraph

4. In reference to claim 26, 35 U.S.C. 112 sixth paragraph states that a claim limitation expressed in means plus function language "shall be construed to cover the corresponding structure…" described in the specification and equivalents thereof." If one employs means plus function language in a claim one must set forth in the specification an adequate disclosure showing what is meant by that language.

The applicant has failed to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112. ***In re Donaldson Co.,*** **16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc).**

Claim 26 will be examined as if the means for obtaining is defined as a sensor and means for controlling is defined as a processor.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims **10, 12, 26, 28 and 33** are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al. (US 5,664,270).

7. **As to claim 10,** Bell teaches a controlling method to control at least one ventilation pressure of an artificial ventilator **30f** of ventilating an artificial ventilated lung of a patient in accordance with a plurality of lung positions **(see col. 5 lines 50-55; see col. 8 lines 30-42; Bell**

recites "Turn angle sensor 34b in the preferred embodiment is a potentiometer mounted in association with the central rotation shaft 60 about which the patient platform 61 of bed assembly is adapted to rotate inherently implies that there are plurality of lung positions), the patient lying in a nursing bed **61 (see col. 8 lines 35-40)** and the position of the artificially ventilated lung is movable by a position actuator **(see col. 8 lines 30-40)**, comprising the steps of:

a) obtaining lung status information which is based on at least two supporting points of a first status of the artificially ventilated lung is accordance with a first lung position and a second status of the artificially ventilated lung in accordance with a second lung position **(see col. 8 lines 30-42 and col. 10 lines 25-30; Bell recites that the controller 12 is adapted to control the overall acquisition, processing, storage, display and transmittal of data related to transducers 30a-30g and 34a-34c implies that the ventilator and the rotation of the patient platform 61 is controlled by controller 12 and the fact that the platform is rotatable inherently implies that there are two positions the first position being when the platform is flat and the second position being when it is rotated there the controller obtains lung status information based on two points, the first status of the artificially ventilated lung in the first lung position and the second status of the artificially ventilated lung in the second lung position)**,

b) moving the artificially ventilated lung by the position actuator **60** to a defined lung position **(see col. 8 lines 30-42)**,

c) controlling of at least one ventilation pressure in accordance with the defined lung position and in accordance with the lung status information related to the lung position **(see col. 10 lines 25-30; Bell recites that the controller 12 is adapted to control the overall acquisition,**

processing, storage, display and transmittal of data related to transducers 30a-30g and 34a-34c implies that the Bell device controls at least one ventilation pressure in accordance with the defined lung position and in accordance with the lung status information related to the lung position).

8. **As to claim 12,** Bell teaches a controlling method wherein the lung status information is interpolated between the supporting points in accordance with the difference between two neighboring supporting points **(see col. 10 lines 25-30; the fact the controller 12 of Bell controls the overall acquisition, processing, storage, display and transmittal of data related to transducers it inherently implies that it also interpolates between the supporting points in accordance with the difference between two neighboring supporting points)**.

9. **As to claim 26,** Bell teaches an apparatus that comprises a) means for obtaining lung status information which is based on at least two supporting points of a first status of the artificially ventilated lung in accordance with a first lung position and a second status of the artificially ventilated lung in accordance with a second lung position **(see col. 8 lines 30-42 and col. 10 lines 25-30; Bell recites that the controller 12 is adapted to control the overall acquisition, processing, storage, display and transmittal of data related to transducers 30a-30g and 34a-34c implies that the ventilator and the rotation of the patient platform 61 is controlled by controller 12 and the fact that the platform is rotatable inherently implies that there are two positions the first position being when the platform is flat and the second position being when it is rotated there the controller obtains lung status information based on two points, the first status of the artificially ventilated lung in the first lung position and the second status of the artificially ventilated lung in the second lung position)**, b) a position

actuator **60** to move the artificially ventilated lung to a defined lung position **(see col. 8 lines 30-42)**, c) means for controlling of at least one ventilation pressure in accordance with the defined lung position and in accordance with the lung status information related to said defined lung position **(see col. 10 lines 25-30; Bell recites that the controller 12 is adapted to control the overall acquisition, processing, storage, display and transmittal of data related to transducers 30a-30g and 34a-34c implies that the Bell device controls at least one ventilation pressure in accordance with the defined lung position and in accordance with the lung status information related to the lung position)**.

10. **As to claim 28,** Bell teaches an apparatus wherein the lung status information is interpolated between the supporting points in accordance with the difference between two neighboring supporting points **(see col. 10 lines 25-30; the fact the controller 12 of Bell controls the overall acquisition, processing, storage, display and transmittal of data related to transducers it inherently implies that it also interpolates between the supporting points in accordance with the difference between two neighboring supporting points)**.

11. **As to claim 33,** Bell teaches a controlling method that comprises the steps of a) moving the artificially ventilated lung by the position actuator to a defined lung position **(see col. 8 lines 30-42)**, b) determining the status of the artificially ventilated lung **(see col. 8 lines 30-42 and col. 10 lines 25-30)**, c) recording the status of the artificially ventilated lung in accordance with the defined lung position **(see col. 10 lines 25-30)**, and repeating the steps a), b), and c) with a predetermined differential step size of the position actuator until the status of the artificially ventilated lung has been determined over a predetermined range of lung positions **(see col. 8 lines 30-42 and col. 10 lines 25-30)**.

Allowable Subject Matter

12. Claims **13 and 29** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a method step wherein at least one ventilation pressure is controlled such that the lung status information yields a homogeneous distribution over a plurality of lung positions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761